January 9, 2007

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Written Ex Parte*: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* – CG Docket No. 03-123

Dear Ms. Dortch:

The record in this proceeding reflects a broad consensus that the current rate methodology for video relay service ("VRS") should be replaced with a formula-based regime that will, among other things, ensure predictable and stable rates for at least three years and greatly reduce the administrative costs and burdens on the Commission and providers in determining the applicable VRS rate each year.[1]

As commenters made clear in response to the *Further Notice*, the cost-of-service methodology that currently applies to VRS suffers from a number of problems.[2] As a result, not a single commenter urged the Commission to retain that methodology in its current form.[3] Instead, commenters offered two alternatives for the Commission to consider: the Joint Providers' proposal, which draws on the price cap framework the FCC

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1 Initial comments were filed on October 30, 2006 and reply comments on November 13, 2006, in response to the FCC's *Further Notice* in the above-captioned docket. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379 (2006) (FCC 06-106) ("*Further Notice*"). (All comments and reply comments cited herein were filed in CG Docket No. 03-123 on those dates.)

2 *See*, *e.g.*, Comments of Sprint Nextel Corporation at 1 ("Sprint Comments"); Reply Comments of Hands On Video Relay Services, Inc. at 1. Among other substantive problems identified in the record, the current methodology does not maximize provider incentives to operate efficiently; imposes heavy administrative burdens on the FCC, NECA, and providers alike; and does not adequately compensate providers for all reasonable costs, as required by the Americans with Disabilities Act ("ADA") and section 225 of the Communications Act of 1934, as amended. Those problems have been exacerbated by a ratemaking process that lacks transparency and predictability.

3 Although Verizon proposed a new rate methodology, it urged the FCC to use a substantially "streamlined" and "refined" version of the current process to reset the initial VRS rate after three years. Comments of Verizon at 11 ("Verizon Comments"); Reply Comments of Verizon at 8.

developed for AT&T and the larger incumbent local exchange carriers ("LECs");[4] and Verizon's proposal (subsequently endorsed by AT&T), which is conceptually similar to the Joint Providers' proposal.[5]

The two proposals agree to a remarkable extent on the basic contours of a new formula-based approach, even though they differ on certain particulars of the rate formula itself.

<u>Areas of Agreement</u>

- Both proposals would replace the current cost-of-service regime with a rate formula that makes automatic adjustments to an initial VRS rate.
  - The initial VRS rate would be determined by the Commission using information it already has.
  - The VRS rate would be automatically adjusted on an annual basis to account for inflation.
  - The VRS rate also would be adjusted to account for exogenous changes in costs beyond the control of providers.
- Both formulas would be in place for three years, thereby eliminating the need for annual filings by providers.
- Both proposals recognize that the provision of VRS is a labor-intensive business, unlike the capital-intensive telephone business, which historically has achieved productivity gains greater than those of the economy as a whole.
- Both proposals aspire to benefit the public interest by encouraging provider efficiency, enhancing predictability, and simplifying the rate setting process.

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4 Joint Comments of Communications Access Center for the Deaf and Hard of Hearing, Communication Service for the Deaf, Inc., GoAmerica, Inc., Hands On Video Relay Services, Inc., Snap Telecommunications, Inc., Sorenson Communications, Inc., and Sprint Nextel Corporation at 3-5 ("Joint Provider Comments"). The Joint Providers firmly believe that a rate setting methodology for VRS must: (1) encourage providers to continue making VRS available to all deaf and hard-of-hearing individuals; (2) encourage greater provider efficiency and competition (thereby keeping rates reasonable); (3) encourage providers to make investments that, over time, will help to offset anticipated labor cost increases, such as investments in cost-reducing new technology and investments to expand the pool of qualified interpreters; and (4) simplify the rate-setting process, because forecasting costs and demand has proven to be extremely complicated and has been a source of a great deal of debate. The Joint Providers are united in their view that a price cap methodology provides the best means of achieving these key objectives and fulfilling the goals of the ADA while avoiding the shortcomings of the current system.

5 *See* Verizon Comments at ii, 8; Reply Comments of AT&T Inc. at 2 (AT&T "generally supports" Verizon's proposal) ("AT&T Reply Comments").

Areas of Difference

- The Joint Providers would set the initial VRS rate at $6.644 per minute (*i.e.*, the rate most recently approved as reasonable by the Commission),[6] versus the $7.01 rate favored by Verizon.
- The two proposals would rely on different federal government inflation measures to set the annual inflation factor. The Joint Providers recommend the Gross Domestic Product – Price Index ("GDP-PI"), which is the general inflation factor that is also currently used in the price cap formula for the incumbent LECs. Verizon recommends the Department of Labor's data on average hourly wage increases for laborers in the Professional and Business Services industry.
- The Joint Providers would encourage efficiency by making automatic annual adjustments in the VRS rate through the use of an "X factor" and a consumer productivity dividend ("CPD"). Verizon and AT&T would not include those downward adjustments, effectively setting the X factor and CPD at zero.
- Under the Joint Providers' proposal, exogenous adjustments would be permitted at the time the additional costs are incurred. Under Verizon's approach, those adjustments would occur annually.

As the foregoing summary makes clear, the two proposals envision similar formula-based approaches to setting VRS rates, and differ on how they would treat certain components of the actual formula. AT&T's statement that it "strongly opposes [the Joint Providers'] approach" should be viewed in the context of this conceptual compatibility.[7] AT&T's concern appears to be directed not to the Joint Providers' proposal *in toto*, but to one aspect of that approach: the use of an X factor and CPD to drive down the VRS rate over time.[8] While this difference is not trivial, it does not diminish the fact that all VRS providers that responded to the *Further Notice* (including AT&T) agree on the need to adopt a VRS rate formula that makes predictable annual adjustments to the rate over a three-year period. Six major consumer groups have also recommended that the FCC consider the specific proposal put forward by the Joint Providers.[9] The unrebutted record

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6 *See* Joint Provider Comments at 11 & n.24. The Joint Providers thus followed the FCC's price cap precedent: In establishing price caps for AT&T and large LECs, the FCC set the initial price indices at the most recently authorized rate levels. *See id.* at 5 & n.12. It is also worth noting that the $6.644 rate is the lowest the VRS rate has been in the last five years.

7 AT&T Reply Comments at 3.

8 *See id.* at 3-5. AT&T may also object to the Joint Providers' proposal to set the initial rate at $6.644 per minute instead of $7.01. *See id.* at 5 (stating that many providers, including AT&T, do not recover their TRS costs, and that Verizon's proposal would provide AT&T a better opportunity to do so).

9 Reply Comments of Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; National Association of the Deaf; Deaf and

evidence therefore supports a price cap-based methodology for VRS, or something that is conceptually very similar.[10]

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Sincerely,

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Hard of Hearing Consumer Advocacy Network; California Coalition of Agencies Serving the Deaf and Hard of Hearing; and Hearing Loss Association of America, at 5 ("[T]he Consumer Groups encourage the FCC to take into consideration the comments and concerns of the Joint Commenters with respect to rate setting, price caps, and other related matters.").

10 The clear weight of record evidence supports using the same methodology to set rates for IP Relay. *See* Joint Provider Comments at 2-3, 5-13; Comments of Sorenson Communications, Inc. at 5-8, 27-40; Verizon Comments at i-ii, 1, 8-11; Sprint Comments at 5-6; AT&T Reply Comments at 2, 5.

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